

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : **10/505443**  
Applicant : Muller et al.  
Filing date : September 1, 2004  
Title : Measurement Probe and Authentication Device Comprising the  
Same  
TC/A.U. : 2862  
Examiner : **LeDynh**  
Docket No. : **5484**  
Customer No. : 26936

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Commissioner for Patents  
Mail Stop AF  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**REQUEST TO WITHDRAW HOLDING OF FINALITY**

Sir:

We request that the action of July 24, 2006 be designated non-final. That action was the first substantive action on the merits of the invention, the first action having been solely directed to a formality.

MPEP 706.07(a) states "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)."

The grounds of rejection (anticipation and obviousness) in the July 24 rejection were not previously made, and were not necessitated by applicant's one-word

amendment made in response to a technical point raised in the first office action, where the only ground was identified (incorrectly) as “failing to comply with the written description requirement”.

The examiner could have conducted a search and cited prior art in the first action, but chose not to do so. The applicant needs an opportunity to address the art rejection without being under the restrictions imposed by a final rejection.

Respectfully submitted,

/Charles Fallow/

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August 8, 2006